

- (C) race or ethnicity;
- (D) date of birth;
- (E) driver's license or identification card number; and
- (F) social security number;
- (2) the offense charged against the *person* [applicant] or for which the *person* [applicant] was referred to the juvenile justice system;
- (3) the date on which and the county where the offense was alleged to have been committed; and
- (4) if a petition was filed in the juvenile court, the cause number assigned to the petition and the court and county in which the petition was filed.

SECTION 2. The changes in law made by this Act apply only to the records of a person who becomes eligible for sealing of records under Section 58.003, Family Code, as amended by this Act, on or after the effective date of this Act. The records of a person who was eligible for sealing of records under that section before the effective date of this Act are governed by the law applicable to the records immediately before that date, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2015.

Passed the Senate on April 9, 2015: Yeas 31, Nays 0; passed the House on May 27, 2015: Yeas 142, Nays 2, two present not voting.

Approved June 19, 2015.

Effective September 1, 2015.

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**EXPANDING THE POWERS AND DUTIES OF THE OFFICE OF  
CAPITAL WRITS AND RENAMING THE OFFICE OF CAPITAL  
WRITS THE OFFICE OF CAPITAL AND FORENSIC WRITS**

**CHAPTER 1215**

S.B. No. 1743

**AN ACT**

**relating to expanding the powers and duties of the office of capital writs and renaming the office of capital writs the office of capital and forensic writs.**

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Sections 2(b), (c), and (f), Article 11.071, Code of Criminal Procedure, are amended to read as follows:

(b) If a defendant is sentenced to death the convicting court, immediately after judgment is entered under Article 42.01, shall determine if the defendant is indigent and, if so, whether the defendant desires appointment of counsel for the purpose of a writ of habeas corpus. If the defendant desires appointment of counsel for the purpose of a writ of habeas corpus, the court shall appoint the office of capital *and forensic* writs to represent the defendant as provided by Subsection (c).

(c) At the earliest practical time, but in no event later than 30 days, after the convicting court makes the findings required under Subsections (a) and (b), the convicting court shall appoint the office of capital *and forensic* writs or, if the office of capital *and forensic* writs does not accept or is prohibited from accepting an appointment under Section 78.054, Government Code, other competent counsel under Subsection (f), unless the applicant elects to proceed pro se or is represented by retained counsel. On appointing counsel under this section, the convicting court shall immediately notify the court of criminal appeals of the appointment, including in the notice a copy of the judgment and the name, address, and telephone number of the appointed counsel.

(f) If the office of capital *and forensic* writs does not accept or is prohibited from accepting an appointment under Section 78.054, Government Code, the convicting court shall appoint counsel from a list of competent counsel maintained by the presiding judges of the administrative judicial regions under Section 78.056, Government Code. The convicting court shall reasonably compensate as provided by Section 2A an attorney appointed under this section, other than an attorney employed by the office of capital *and forensic* writs, regardless of whether the attorney is appointed by the convicting court or was appointed by the court of criminal appeals under prior law. An attorney appointed under this section who is employed by the office of capital *and forensic* writs shall be compensated in accordance with Subchapter B, Chapter 78, Government Code.

SECTION 2. Section 2A(a), Article 11.071, Code of Criminal Procedure, is amended to read as follows:

(a) The state shall reimburse a county for compensation of counsel under Section 2, other than for compensation of counsel employed by the office of capital *and forensic* writs, and for payment of expenses under Section 3, regardless of whether counsel is employed by the office of capital *and forensic* writs. The total amount of reimbursement to which a county is entitled under this section for an application under this article may not exceed \$25,000. Compensation and expenses in excess of the \$25,000 reimbursement provided by the state are the obligation of the county.

SECTION 3. Section 3(f), Article 11.071, Code of Criminal Procedure, is amended to read as follows:

(f) This section applies to counsel's investigation of the factual and legal grounds for the filing of an application for a writ of habeas corpus, regardless of whether counsel is employed by the office of capital *and forensic* writs.

SECTION 4. Sections 4A(e) and (f), Article 11.071, Code of Criminal Procedure, are amended to read as follows:

(e) Sections 2A and 3 apply to compensation and reimbursement of counsel appointed under Subsection (b)(3) in the same manner as if counsel had been appointed by the convicting court, unless the attorney is employed by the office of capital *and forensic* writs, in which case the compensation of that attorney is governed by Subchapter B, Chapter 78, Government Code.

(f) Notwithstanding any other provision of this article, the court of criminal appeals shall appoint counsel and establish a new filing date for application, which may be no later than the 270th day after the date on which counsel is appointed, for each applicant who before September 1, 1999, filed an untimely application or failed to file an application before the date required by Section 4(a) or (b). Section 2A applies to the compensation and payment of expenses of counsel appointed by the court of criminal appeals under this subsection, unless the attorney is employed by the office of capital *and forensic* writs, in which case the compensation of that attorney is governed by Subchapter B, Chapter 78, Government Code.

SECTION 5. Section 6(b-1), Article 11.071, Code of Criminal Procedure, is amended to read as follows:

(b-1) If the convicting court receives notice that the requirements of Section 5(a) for consideration of a subsequent application have been met and if the applicant has not elected to proceed pro se and is not represented by retained counsel, the convicting court shall appoint, in order of priority:

(1) the attorney who represented the applicant in the proceedings under Section 5, if the attorney seeks the appointment;

(2) the office of capital *and forensic* writs, if the office represented the applicant in the proceedings under Section 5 or otherwise accepts the appointment; or

(3) counsel from a list of competent counsel maintained by the presiding judges of the administrative judicial regions under Section 78.056, Government Code, if the office of capital *and forensic* writs:

(A) did not represent the applicant as described by Subdivision (2); or

(B) does not accept or is prohibited from accepting the appointment under Section 78.054, Government Code.

SECTION 6. Article 26.044(a)(2), Code of Criminal Procedure, is amended to read as follows:

(2) “Office of capital *and forensic* writs” means the office of capital *and forensic* writs established under Subchapter B, Chapter 78, Government Code.

SECTION 7. Article 26.05(a), Code of Criminal Procedure, is amended to read as follows:

(a) A counsel, other than an attorney with a public defender’s office or an attorney employed by the office of capital *and forensic* writs, appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be paid a reasonable attorney’s fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:

(1) time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, and time spent in a proceeding in which sworn oral testimony is elicited;

(2) reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires;

(3) preparation of an appellate brief and preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and

(4) preparation of a motion for rehearing.

SECTION 8. Section 2, Article 38.01, Code of Criminal Procedure, is amended by adding Subdivision (5) to read as follows:

(5) “Office of capital *and forensic* writs” means the office of capital *and forensic* writs established under Subchapter B, Chapter 78, Government Code.

SECTION 9. Section 4, Article 38.01, Code of Criminal Procedure, is amended by adding Subsection (h) to read as follows:

(h) *The commission may review and refer cases that are the subject of an investigation under Subsection (a)(3) or (a-1) to the office of capital and forensic writs in accordance with Section 78.054(b), Government Code.*

SECTION 10. The heading to Chapter 78, Government Code, is amended to read as follows:

#### CHAPTER 78. CAPITAL AND FORENSIC WRITS COMMITTEE AND OFFICE OF CAPITAL AND FORENSIC WRITS

SECTION 11. The heading to Subchapter A, Chapter 78, Government Code, is amended to read as follows:

##### SUBCHAPTER A. CAPITAL AND FORENSIC WRITS COMMITTEE

SECTION 12. Section 78.001, Government Code, is amended to read as follows:

Sec. 78.001. DEFINITIONS. In this subchapter:

(1) “Committee” means the capital *and forensic* writs committee established under this subchapter.

(2) “Office of capital *and forensic* writs” means the office of capital *and forensic* writs established under Subchapter B.

SECTION 13. Section 78.002, Government Code, is amended to read as follows:

Sec. 78.002. ESTABLISHMENT OF COMMITTEE; DUTIES. (a) The capital *and forensic* writs committee is established.

(b) The committee shall recommend to the court of criminal appeals as provided by

Section 78.004 a director for the office of capital *and forensic* writs when a vacancy exists for the position of director.

SECTION 14. The heading to Section 78.004, Government Code, is amended to read as follows:

Sec. 78.004. RECOMMENDATION AND APPOINTMENT OF DIRECTOR OF OFFICE OF CAPITAL *AND FORENSIC* WRITS.

SECTION 15. Section 78.004, Government Code, is amended to read as follows:

Sec. 78.004. RECOMMENDATION AND APPOINTMENT OF DIRECTOR OF OFFICE OF CAPITAL *AND FORENSIC* WRITS. (a) The committee shall submit to the court of criminal appeals, in order of the committee's preference, a list of the names of not more than five persons the committee recommends that the court consider in appointing the director of the office of capital *and forensic* writs when a vacancy exists for the position of director. If the committee finds that three or more persons under the committee's consideration are qualified to serve as the director of the office of capital *and forensic* writs, the committee must include at least three names in the list submitted under this subsection.

(b) Each person recommended to the court of criminal appeals by the committee under Subsection (a):

(1) must exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases, as described by the Guidelines and Standards for Texas Capital Counsel, as published by the State Bar of Texas; and

(2) may not have been found by a state or federal court to have rendered ineffective assistance of counsel during the trial or appeal of a *criminal* ~~[death penalty]~~ case.

(c) When a vacancy for the position exists, the court of criminal appeals shall appoint from the list of persons submitted to the court under Subsection (a) the director of the office of capital *and forensic* writs.

SECTION 16. The heading to Subchapter B, Chapter 78, Government Code, is amended to read as follows:

#### SUBCHAPTER B. OFFICE OF CAPITAL *AND FORENSIC* WRITS

SECTION 17. Section 78.051, Government Code, is amended to read as follows:

Sec. 78.051. DEFINITIONS. In this subchapter:

(1) "Committee" means the capital *and forensic* writs committee established under Subchapter A.

(2) "Office" means the office of capital *and forensic* writs established under this subchapter.

SECTION 18. Section 78.052(a), Government Code, is amended to read as follows:

(a) The office of capital *and forensic* writs is established and operates under the direction and supervision of the director of the office.

SECTION 19. Section 78.053(b), Government Code, is amended to read as follows:

(b) The director shall employ attorneys and employ or retain licensed investigators, *experts*, and other personnel necessary to perform the duties of the office. To be employed by the director, an attorney may not have been found by a state or federal court to have rendered ineffective assistance of counsel during the trial or appeal of a *criminal* ~~[death penalty]~~ case.

SECTION 20. Section 78.054, Government Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) The office may not represent a defendant in a federal habeas review. The office may not represent a defendant in an action or proceeding in state court other than an action or proceeding that:

(1) is conducted under Article 11.071, Code of Criminal Procedure;

(2) is collateral to the preparation of an application under Article 11.071, Code of Criminal Procedure; ~~or~~

(3) concerns any other post-conviction matter in a death penalty case other than a direct appeal, including an action or proceeding under Article 46.05 or Chapter 64, Code of Criminal Procedure; or

(4) is conducted under Article 11.073, Code of Criminal Procedure, or is collateral to the preparation of an application under Article 11.073, Code of Criminal Procedure, if the case was referred in writing to the office by the Texas Forensic Science Commission under Section 4(h), Article 38.01, Code of Criminal Procedure.

(d) The office may consult with law school clinics with applicable knowledge and experience and with other experts as necessary to investigate the facts of a particular case.

SECTION 21. Section 79.001(12), Government Code, is amended to read as follows:

(12) "Office of capital *and forensic* writs" means the office of capital *and forensic* writs established under Subchapter B, Chapter 78.

SECTION 22. Section 79.031, Government Code, is amended to read as follows:

Sec. 79.031. FAIR DEFENSE ACCOUNT. The fair defense account is an account in the general revenue fund that may be appropriated only to:

(1) the commission for the purpose of implementing this chapter; and

(2) the office of capital *and forensic* writs for the purpose of implementing Subchapter B, Chapter 78.

SECTION 23. Section 411.082(5), Government Code, is amended to read as follows:

(5) "Office of capital *and forensic* writs" means the office of capital *and forensic* writs established under Subchapter B, Chapter 78.

SECTION 24. Section 411.088(a-1), Government Code, is amended to read as follows:

(a-1) The department may not charge a fee under Subsection (a) for providing criminal history record information to:

(1) a criminal justice agency;

(2) the office of capital *and forensic* writs; or

(3) a public defender's office.

SECTION 25. Section 411.1272, Government Code, is amended to read as follows:

Sec. 411.1272. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: OFFICE OF CAPITAL *AND FORENSIC* WRITS AND PUBLIC DEFENDER'S OFFICES. The office of capital *and forensic* writs and a public defender's office are entitled to obtain from the department criminal history record information maintained by the department that relates to a criminal case in which an attorney compensated by the office of capital *and forensic* writs or by the public defender's office has been appointed.

SECTION 26. This Act takes effect September 1, 2015.

Passed the Senate on May 5, 2015: Yeas 31, Nays 0; the Senate concurred in House amendment on May 28, 2015: Yeas 31, Nays 0; passed the House, with amendment, on May 26, 2015: Yeas 141, Nays 3, two present not voting.

Approved June 19, 2015.

Effective September 1, 2015.